

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 31, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RICCI K. FRISK,

Plaintiff,

v.

THE STATE OF WASHINGTON, and

OFFICE OF ADMINISTRATIVE

HEARINGS,

Defendants.

No. 2:21-CV-00005-SAB

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT;  
REMANDING TO STATE  
COURT**

Before the Court is Defendants' Motion for Summary Judgment Dismissal, ECF No. 35. The motion was considered without oral argument. Plaintiff is represented by Christopher Hogue. Defendants are represented by David L. Force and Katherine A. McNulty. The Court took the motion under advisement and issued a show cause order to the parties, ECF No. 48. Upon considering the briefing, the caselaw, and the parties' arguments, the Court grants Defendants' Motion for Summary Judgment Dismissal and Remands this case back to the Spokane County Superior Court.

**Legal Standard**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT; REMANDING TO STATE COURT # 1**

1 matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
2 there is sufficient evidence favoring the non-moving party for a jury to return a  
3 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
4 (1986). The moving party has the initial burden of showing the absence of a  
5 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).  
6 If the moving party meets its initial burden, the non-moving party must go beyond  
7 the pleadings and “set forth specific facts showing that there is a genuine issue for  
8 trial.” *Anderson*, 477 U.S. at 248.

9 In addition to showing there are no questions of material fact, the moving  
10 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
11 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
12 to judgment as a matter of law when the non-moving party fails to make a  
13 sufficient showing on an essential element of a claim on which the non-moving  
14 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party  
15 cannot rely on conclusory allegations alone to create an issue of material fact.  
16 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

17 When considering a motion for summary judgment, a court may neither  
18 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant  
19 is to be believed, and all justifiable inferences are to be drawn in his favor.”  
20 *Anderson*, 477 U.S. at 255.

### 21 **Applicable Law and Analysis**

22 States and state government entities are considered “arms of the State”  
23 pursuant to the Eleventh Amendment. *Will v. Michigan Dep’t of State Police*, 491  
24 U.S. 58, 70 (1989). Unlike *Monell* liability, states and state’s entities are not  
25 “persons” under § 1983. *Id.* at 71.; *see Monell v. Dep’t of Soc. Servs. of City of*  
26 *New York*, 436 U.S. 658 (1978).

1 Here, Defendants are not persons subject to a § 1983. Therefore, the two  
2 federal claims pursuant to 42 U.S.C. § 1983 are dismissed.

### 3 **Remaining State Claims**

4 A district court may decline to exercise supplemental jurisdiction if it has  
5 dismissed all claims over which it had original jurisdiction. *See* 28 U.S.C. §  
6 1367(c)(3); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725–26 (1966)  
7 (“Certainly, if the federal claims are dismissed before trial, even though not  
8 insubstantial in a jurisdictional sense, the state claims should be dismissed as  
9 well.”). Here, the Court has granted Defendants’ Motion for Summary Judgment  
10 concerning the federal claims. The Court declines to exercise supplemental  
11 jurisdiction over plaintiffs’ state law claims and remands those claims to Spokane  
12 County Superior Court.

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28 **ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY  
JUDGMENT; REMANDING TO STATE COURT # 3**

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment Dismissal, ECF No. 35, is **GRANTED**.
2. The District Court Executive is directed to enter judgment in favor of Defendants and against Plaintiff with respect to the 42 U.S.C. §1983 claims.
3. The above-captioned case is **REMANDED** to the Spokane County Superior Court.

**IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter this Order, provide copies to counsel, and **close the file**.

**DATED** this 31st day of March 2023.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
Chief United States District Judge